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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 143

EMMA SPECTOR,

Petitioner,

vs.

IONE LOIS PEERE, *et al.*,

Respondent.

Motion for Leave to File a Brief Amicus Curiae in Petition for Rehearing of Petition for Writ of Certiorari.

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TABLE OF AUTHORITIES CITED

CODE OF FEDERAL REGULATIONS	PAGE
25 Code of Federal Regulations, p. 241	1, 2, 3

STATUTES	
24 Statutes at Large, p. 389	2
26 Statutes at Large, p. 712	2
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Lorene Welmas McGlamary, member Agua Caliente (Palm Springs) Band of Mission Indians, an Independent Sovereign Nation and Government, respectfully moves for leave to file a brief *amicus curiae* in this case.

I.

The indulgence of this Court is respectfully asked to state at some length the interest in this cause and some anomalies in its proceedings.

The applicant is a former Tribal Chief and Indian Spokesman for said Indian nation, and resides at 511 Via Miraleste, Palm Springs, California. She, five children and four grandchildren have been issued United States Trust Patent for allotments appraised at $960,000. The Secretary of the Interior, Trustee, has conducted proceedings in accordance with the provisions of 25 U. S. C. A. Sections 349 and 405 (25 C. F. R. 241), whereby pur-

chasers have bought and paid for part of their lands valued at $520,000. Purchases from other Indians, exceeding one million dollars in value also have been conducted by the Secretary, Trustee and Title Holder, in the exercise of his discretion, in the following prescribed and ustomary manner:

(1) The Indian trust patentee and allottee, enters into an agreement with his Trustee giving his consent for the Trustee to arrange an alienation and sale. (2) An appraisement of the land is made. (3) A required and enforcible offer agreement or proposal with the Secretary is obtained. (4) If the offer is accepted by the Secretary, he issues a fee patent to the Indian allottee and sends it to the local Indian Agent, who is charged with seeing that the Indian Fee Patentee, and purchasers, carry out the terms of the proposal, and that payment is made.

The State Court decision herein seems to invalidate the plaintiff's agreement with the Indian's Trustee to purchase, because the Indian's agreement of consent with his Trustee was void by reason of his incompetency. It cited as authority the Statutes of 1887 (24 Stat. 389) and 1891 (26 Stat. 712), and disregarded their amendments of 1906, 25 U. S. C. A. Sec. 349 (Code of Fed. Reg., Vol. 25, Sec. 241). It disregarded the order of the United States Land Office issuing the fee patent which was conclusive and *res judicata* that the proceedings were valid; the State Court failed to take judicial notice of the Land Office Order, which this Court may do. The State Court did not seem to accept the allegations as to a valid agreement as true, and must have considered other matters that might have been alleged in improper answers, or in arguments. The sustaining of the demurrer excluded the introduction of evidence and the form and terms of the contract but the Court could have taken judicial notice that the United

States regulations concerning the subject of removing restrictions against Indian land sales, prescribed that the only contract the Indian could make was with his Trustee, to consent to the proceedings, or some form of an application; that he was not making a contract with the purchaser whose proposal agreement was with the Secretary as Trustee and representative of the Indian. The State Court misconceived the issue; the incompetency of the allottee Indian to make a contract with a purchaser was not the issue; the issue was whether an Indian allottee and beneficiary of land held in trust by the Secretary, could make a lawful agreement with his Trustee, according to the Sections 349 or 405, and the regulations (25 C. F. R., 241). Under the regulations and customs a proposal of the plaintiff made to the Trustee was not an agreement direct with the Indian and did not become an agreement until it was confirmed by the Trustee's acceptance and the order to issue a fee patent.

The question continues to be of large practical importance in the administration of Indian lands by the United States, and by the Government of said Indian Nation.* It is of further importance in the growth and expansion of the City of Palm Springs with its 25,000 population, in the Indians' ownership of several thousand acres of land worth several million dollars (see Pet. p. 10). For if Petition for Writ of Certiorari is not granted, and the State Court decision is allowed to stand and supplant the Federal Statutes and Regulations, it will cloud the titles to all Indian lands throughout the entire country as well as the Palm Springs Reservation, will depress Indian land values and prevent Indians from receiving adequate in-

*Which by treaty, ordinance and statute has delegated such sovereign powers to the United States Government.

come from their properties. It will make land title insurance unobtainable, and proper land developments impossible.

The State Court has based its decision of sustaining the demurrer, on the theory that an Indian is *per se* incompetent; although there was no evidence that he had not been declared competent and the Court could have taken judicial notice that by an Order of the United States Land Office Marcus Pete was issued a fee patent on October 9, 1952, for a parcel not involved in this case, when he presumably was declared competent. It may not have been material to the issue, as the regulations provided, and the presumption is, that Pete made no agreement with the purchasers except through his Trustee. There has been some discussion as to whether, if Pete contracted with the purchasers, his contract was later confirmed by acts performed after issue of the fee patent; the presumption is that the Indian Agent, Marcus Pete, and the representative Charles Miller, made confirmation by having Pete execute deeds to each tenant including the plaintiff for their respective parcels. Miller got a deed for 70 or 73 feet frontage.

From the record and arguments in the State Court, there is indication that the local Indian Agent and Representative Miller had Pete execute a deed to the plaintiff Emma Spector for her 30-foot parcel and had Pete alter it to 27 feet frontage and then they withheld from the plaintiff, this petitioner, although she had made her down payment of $1,150 and was able, willing and ready to take the 27-foot deed and pay $850 more and notes for the remainder of the $7,500 price. The indication is the deed was altered and withheld with the knowledge of the Indian Agent (thus the United States Government) and if fraudulent would be a cause for cancelling and annulling the fee patent to Pete and authorize a conveyance of good

title to the plaintiff, Emma Spector. Also it appears that later an attempt was made by them to convey 27 feet of the Emma Spector occupancy to one Lewis by a defective deed.

There is indication that the plaintiff is still in rightful possession of her 30-foot frontage leasehold though without a deed of record, although she had paid Marcus Pete $1,150 on account and was ready, able and willing to pay the balance of the $7,500 purchase price.

These Indians are not strangers to this and other Federal Courts wherein they have been parties in over fifty suits, in whose decisions much history of this Indian Tribe appears. The land involved is in the center of the Palm Springs business district, adjoining the Indian Mineral Springs reserve. It is one block from the famed Desert Inn of the Hearst estate, and near the mansions of the late Samuel Untermyer and many other notables of the professional and entertainment world.

II.

The interest of this applicant and other Indians in this case arises from the fact that they have no other course in disposing of their lands than that taken by the plaintiff and other parties in this case, which the State Court declared illegal, although in direct conflict with Federal Court decisions and Regulations. The applicant's family holds trust patented land valued in excess of $500,000, for which they wish the right to dispose of through proceedings conducted by the Secretary of the Interior, under present regulations which right is threatened by this decision of the State Court. Defects in Land Patents, liens and litigation has seriously clouded the Indian land titles, and it has been difficult to obtain Land Title Insurance,

required by California law for real estate development and conveyances. Denial of this Writ of Certiorari would further cloud Indian land titles and marketability.

III.

This applicant has a further interest in this Court granting the Writ of Certiorari herein, in that Marcus Pete of this cause, has clouded the title to land owned by this applicant since 1949; he has executed and recorded a deed for a 27-foot frontage parcel, in 1954, which lies on my property. This applicant is interested in quieting the title to such land; this suit is also for equitable relief and to quiet titles and could clear the title to her said property, if reversed and remanded. An examination of this title in the records and decisions of the Interior Department has revealed matters pertinent to this case, much of which this Court could take judicial notice, and which may not have been available to the petitioner herein.

IV.

In the instant case the petitioner herein, Emma Spector, in the State Court has argued primarily as to the validity of a purchase agreement with the Indian Marcus Pete individually, and has barely mentioned the effect of the conduct of the Secretary of the Interior, the orders of the United States Land Office and the importance that is involved. Since it is likely that the petitioner may pursue the same course in the Court, it is believed that the brief which *amicus curiae* is requesting to file will contain a more complete argument on the points indicated. If the argument is accepted, it would be dispositive of this case.

Respectfully submitted,

SAMUEL MCKEEHAN DAGUE,

Counsel for Applicant Lorene Welmas McGlamary.